No. 85-1048

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1985

ROGER VIPPOLIS AND DEBORAH VIPPOLIS,

Petitioners,

-v-

THE VILLAGE OF HAVERSTRAW, NEW YORK, THE HAVERSTRAW VILLAGE POLICE DEPARTMENT, AND MICHAEL A. SQUILLINI,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO CERTIORARI

HERBERT WILLIAM FISCHMAN
HARRY E. YOUTT
Attorneys for Petitioners
666 Fifth Avenue
New York, New York 10103
(212) 586-1462

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PRELIMINARY STATEMENT

This Brief replies to the brief submitted by respondents in opposition to the petition for writ of certiorari. This case presents

the issue whether the Village of Haverstraw, New York and its police department should be liable for injuries inflicted during a forcible attempt to arrest petitioner for a minor traffic infraction. Respondents oppose the petition largely upon the grounds that the jury resolved essential factual issues against petitioners, thus precluding the review which petitioners seek in this Court. For the reasons which follow, petitioners respectfully submit that respondents' purported reasons for opposing the granting of the writ are entirely unfounded.

Respondents' Unfounded Reliance Upon the Verdict Sheet

Although respondents may dream of a looking glass world in which a *petit* jury's answer to an inartfully worded interrogatory succeeds in depriving this Court of its opportunity to review important legal issues, their dreams are, by reason of the patent illogic of their reasoning, in vain. The jury did not determine that plaintiff failed to prove an institutional failure to supervise and train police officers. It merely registered its conclusion that petitioners failed to prove that the municipal defendants maintained a policy of "inaction against" officers "charged with" violating the civil rights of citizens. (*See* answer to interrogatory number 4(a) on verdict sheet, attached as appendix to respondents' brief at p. 13a.) Obviously this langauge connotes nothing more nor less than the narrow subject of disciplinary "action against" police officers. It does not cover the subject of training or supervision.

The Instructions on Policy and Pattern

Nowhere in respondents' tortured constriction of the jury questionnaire is any consideration given to the trial court's charge to the jury. It must be presumed that the jury followed the instructions given to it at the conclusion of the trial. The jury based its verdict, as instructed, upon the institutional conduct and/or inaction of the municipal defendants.

The trial court's instructions were explicit. The jury would only be justified in returning a plaintiff's verdict against the municipal defendants if it found the constitutional violation to be the product of a "policy or custom" (SA297-98) or the institutional "deliberate indifference" of the municipal defendants (SA301). In defining these terms, the trial court never limited itself to single instances involving the individual police officer defendant. It defined "policy or custom" to comprise either the "repeated" condonation of police conduct that violated constitutional rights (SA297) or "municipal inaction, such as the failure to train or discipline *officers* who violated the civil rights of its citizens." (SA297-98). (Note the plural tense in the italicized word.) Similarly, the court defined "deliberate indifference" as including the intentional and knowing employment of police ". . .*officers* without such [statutorily-required] training . . ." (SA301-02) (again note the use of the plural tense in the italicized word). The court also instructed that the jury could infer deliberate indifference from ". . . a pattern of omissions" of specific, statutorily-imposed duties (SA302).

In light of these instructions, to argue to this Court that the jury's verdict was limited only to the misconduct of Officer Vippolis and that the jury, by answering interrogatory no. 4(a), found expressly that the municipal defendants did not fail to train, supervise or require statutory training qualifications with respect to officers other than Vippolis, is nothing less than sheer sophistry.

The Trial Record

The record amply supports the jury's verdict on issues of policy or pattern. Contrary to the sophistry of respondents' brief, the proof did not apply exclusively to the individual defendant Squillini's training and supervision but to the entire department. On the subject of training programs in compliance with statutory requirements, the police chief testified as to his knowledge about

the statute's requirements. However, he added, ". . . it did not set in motion the mechanism for the municipalities to give this formal training." (SA49) — clearly a reference to municipal policy in general. Later, in questioning by his own counsel, the chief was asked the following question:

> "Q. What action did you take as the chief of police in respect to seeing that *any officer* who did not have that training would get it?" (SA92).

This question was not by its terms limited in any way to Officer Squillini but to "any officer." The chief answered:

> "We attempted [apparently unsuccessfully] to have . . . a part time police officer's school held in Rockland County.
>
> Q. Why? A. Because there were none being held in Rockland County." (SA92-93).

Again, no limitation to Officer Squillini's situation alone, which could, had he been the only unqualified officer, easily have been satisfied by a scholarship to attend a school elsewhere. Instead, the answer, like the question, contemplated a training problem common to the entire department, thus embracing the need for an entire, part-time officer's training schoool.

That the record bore these inferences is demonstrated by the fact that the jury expressly so found, *i.e.*, that the defendants ". . . hired police *officers* in violation of State law . . ." (Interrogatory 4(b), Respondents' Appendix p. 13a). (Again note the plural, rather than a limitation, as respondents would have it, to Officer Squillini).

As we stated in our petition, the policy or pattern was not

limited to a failure to comply with the state training certificate statute. It included the general failure to provide entry training (*see* Petition, p. 9), the failure to supervise (*see* Petition, p. 14), the failure to provide on-going training or promulgate rules with respect to the use of force (*see* Petition, p. 15), and the failure to review instances of excessive violence (*see* Petition, pp. 10-11). Contrary to the respondents' stock rejoinder that the proof only applied to Officer Squillini, the record demonstrates policies and patterns common to the entire department. It includes, especially, a review of numerous complaints and incidents of the use of allegedly unnecessary force by police officers and the police chief's handling of them (SA84, 87, 101-102). And, as has been noted in the petition, the record of these incidents fails to demonstrate that at any time any officer was given instruction or training with respect to how he should handle the use of force in the future (*see* Petition, pp. 9, 14-15).

Again, contrary to respondents' assertions, the issues of supervision and general training were very much a part of the litigation, and they were not resolved against petitioners by the jury. Interrogatory 4(a) on which respondents place such heavy emphasis, makes no mention about "supervision" or general training. On the other hand, the jury's response to Interrogatory 4(b) revealed a specific finding that the municipal defendants failed to train or supervise Officer Squillini adequately. [Also note plaintiff's counsel's request for further elaboration on the subject of "failure to supervise" at side bar (SA316).] The significance of this court's decision in *Oklahoma City v. Tuttle*, 85 L. Ed. 2d 791 (1985) need not be emphasized here.

Significantly, respondents failed to reply at all to petitioner's contention that the Court should review this case in order to deal with the pattern of municipal ignorance and official "ostrichism" with respect to incidents of police violence in Haverstraw (*see* Petition, pp. 11-14), in spite of the significance of this pattern

in light of this Court's decision in the case of *Brandon v. Holt*, ____ U.S. ____, 83 L. Ed. 878 (1985).

Respondents also fail to deal in any way with the petition's discussion of the issue of causation (*see* Petition, pp. 16-18). Petitioners reiterate that the court below mishandled this issue because it failed to acknowledge the fact, demonstrated here and in the petition, that municipal liability was founded upon more than the isolated violence of a single police officer. This case presents a vehicle for this Court to evaluate what should comprise the "affirmative link" between training and supervision inadequacies and the constitutional violations upon which liability in civil rights actions is based [*see* Petition at p. 18 and *Oklahoma City v. Tuttle*, ____ U.S. ____, 85 L. Ed. 2d 791 (1985)]. Respondents' only apparent effort to disarm the petition on this very vital point is in the highly inappropriate insinuation that there is something improper in challenging the Second Circuit's interpretation of the record (*see* Brief in Opposition at pp. 16-17). Petitioners' only rejoinder to this is that they are not seeking to quibble with the court below on an insignificant issue of interpretation; they are challenging the correctness, as a matter of law, of the Second Circuit's decision—a function which is at the very heart of this Court's process of review on certiorari.

CONCLUSION

The petition should be granted for all of the reasons originally set forth. Respondents' opposition, aside from presenting a meaningless demonstration of sophistry in the semantics of a jury questionnaire, fails to deal with any of the important issues set forth in the petition. The verdict should either have been sustained, or the case should have been remanded for a new trial. The issues presented on this appeal deal with the question of municipal liability based upon policies or patterns of indifference and inaction in the training and supervision of police officers in the Village

of Haverstraw, New York. That the offending officer was only working "part-time," as respondents, for some reason, repeatedly emphasize, serves to highlight the need for intensive training and supervision, if professional police standards are to be preserved. The fact that liability was not imposed upon the individual officer is not material to the issues upon which this Court should rule. Indeed it is the issue of municipal liability, apart from the liability of any individual defendant, which requires further treatment and clarification by this Court, based upon the authorities cited in the petition. For the foregoing reasons, we again submit respectfully, that the petition should be granted.

Respectfully submitted,

HERBERT WILLIAM FISCHMAN
HARRY E. YOUTT
Attorneys for Petitioners